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B-125127, September 28, 1955, 35 Comp. Gen. 156

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APPROPRIATIONS - TEMPORARY - AVAILABILITY FOR SOUTHWESTERN POWER ADMINISTRATION CONTRACTS REACTIVATED BY REGULAR APPROPRIATION THE TEMPORARY APPROPRIATION ACT OF JUNE 30, 1955, WHICH PRECLUDES THE USE OF FUNDS FOR ACTIVITIES NOT CONDUCTED DURING THE FISCAL YEAR 1955, IS NOT AVAILABLE FOR OBLIGATION AND EXPENDITURE BETWEEN JULY 1 AND JULY 14, 1955- -- THE DATE OF ENACTMENT OF THE PUBLIC WORKS APPROPRIATION ACT, 1956--- FOR CONTRACTS BETWEEN SOUTHWESTERN POWER ADMINISTRATION AND FIVE ELECTRIC COOPERATIVES WHICH WERE INOPERATIVE DURING 1954 AND 1955 AND WHICH WERE CONTINGENT FOR REACTIVATION UPON THE ENACTMENT OF THE PUBLIC WORKS APPROPRIATION.

TO THE SECRETARY OF THE INTERIOR, SEPTEMBER 28, 1955:

REFERENCE IS MADE TO LETTER DATED AUGUST 23, 1955, FROM THE ADMINISTRATIVE ASSISTANT SECRETARY, REQUESTING A DECISION ON QUESTIONS HEREINAFTER QUOTED CONCERNING THE AVAILABILITY DURING THE PERIOD JULY 1 THROUGH JULY 14, 1955, OF FUNDS APPROPRIATED UNDER TITLE II OF THE PUBLIC WORKS APPROPRIATION ACT, 1956, PUBLIC LAW 163, APPROVED JULY 15, 1955, 69 STAT. 356, TO FULFILL CONTRACTUAL OBLIGATIONS UNDER CONTRACTS BETWEEN THE SOUTHWESTERN POWER ADMINISTRATION (HEREINAFTER REFERRED TO AS SPA), AND FIVE GENERATING AND TRANSMISSION COOPERATIVES.

THE FACTS AS RELATED IN THE LETTER DISCLOSE THAT DURING 1949 AND 1950 THE SPA ENTERED INTO AGREEMENTS WITH THE FOLLOWING GENERATING AND TRANSMISSION COOPERATIVES: CENTRAL ELECTRIC POWER COOPERATIVE, N.W. ELECTRIC POWER COOPERATIVE, INC., KAMO ELECTRIC COOPERATIVE, INC., WESTERN FARMERS ELECTRIC COOPERATIVE, AND SHO-1ME POWER CORPORATION. THESE AGREEMENTS PROVIDED, IN SUBSTANCE, THAT SPA LEASE AND OPERATE AND MAINTAIN THE TRANSMISSION SYSTEM OF EACH OF THE COOPERATIVES FOR A PERIOD OF FORTY YEARS, AND MAKE MONTHLY RENTAL PAYMENTS CALCULATED TO AMORTIZE THE COST OF SUCH SYSTEM DURING THE TERM OF THE AGREEMENTS. SPA IS ALSO OBLIGATED TO SELL AND DELIVER CERTAIN AMOUNTS OF ELECTRIC POWER AND ENERGY TO THE COOPERATIVES, AND, UNDER THE AGREEMENTS WITH CENTRAL ELECTRIC POWER COOPERATIVE, N.W. ELECTRIC POWER COOPERATIVE, INC., AND WESTERN FARMERS ELECTRIC COOPERATIVE, TO PURCHASE THE OUTPUT OF THEIR THERMAL-GENERATING PLANTS. THE VARIOUS TRANSMISSION SYSTEMS AND GENERATING PLANTS, WITH ONE EXCEPTION, WERE NOT COMPLETED PRIOR TO JULY 1, 1953, AND THERE WAS NO PERFORMANCE UNDER THE AGREEMENTS BY EITHER SPA OR THE COOPERATIVES PRIOR TO THAT DATE. THE ONE EXCEPTION WAS THE CENTRAL ELECTRIC POWER COOPERATIVE AGREEMENT WHICH BECAME OPERATIVE BEFORE JUNE 30, 1953. ALL OF THE AGREEMENTS WERE INOPERATIVE DURING THE FISCAL YEARS 1954 AND 1955--- IN FISCAL YEAR 1954 BECAUSE OF A DIRECTION IN THE STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE ACCOMPANYING THE CONFERENCE REPORT (HOUSE REPORT NO. 947, 83D CONG., ST

SESSION) TO H.R. 4828, WHICH BECAME THE INTERIOR DEPARTMENT APPROPRIATION ACT, 1954, 67 STAT. 261, AND IN FISCAL YEAR 1955 BECAUSE FUNDS WERE NOT MADE AVAILABLE UNDER THE CONTINUING FUND, SOUTHWESTERN POWER ADMINISTRATION, FOR THE PURCHASE OF ELECTRIC POWER AND ENERGY, AND RENTALS FOR THE USE OF TRANSMISSION FACILITIES. HOWEVER, TITLE II OF THE PUBLIC WORKS APPROPRIATION ACT, 1956, PROVIDES IN PART AS FOLLOWS:

OPERATION AND MAINTENANCE, SOUTHWESTERN POWER ADMINISTRATION

FOR NECESSARY EXPENSES OF OPERATION AND MAINTENANCE OF POWER TRANSMISSION FACILITIES AND OF MARKETING ELECTRIC POWER AND ENERGY PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE FLOOD CONTROL ACT OF 1944 (16 U.S.C. 825S), AS APPLIED TO THE SOUTHWESTERN POWER AREA, INCLUDING PURCHASE OF NOT TO EXCEED FOUR PASSENGER MOTOR VEHICLES FOR REPLACEMENT ONLY, $1,250,000.

CONTINUING FUND, SOUTHWESTERN POWER ADMINISTRATION

NOT BE EXCEED $6,000,000 SHALL BE AVAILABLE DURING THE CURRENT FISCAL YEAR FROM THE CONTINUING FUND FOR ALL COSTS IN CONNECTION WITH THE PURCHASE OF ELECTRIC POWER AND ENERGY, AND RENTALS FOR THE USE OF TRANSMISSION FACILITIES.

IN HOUSE REPORT NO. 747 AND SENATE REPORT NO. 700, 84TH CONGRESS, ST SESSION, QUOTED IN PART THE ADMINISTRATIVE ASSISTANT SECRETARY'S LETTER, THE RESPECTIVE APPROPRIATIONS COMMITTEES INDICATE THAT THE FOREGOING APPROPRIATIONS WILL ENABLE THE REACTIVATION OF THE CONTRACTS WITH THE COOPERATIVES.

REFERENCE IS THEN MADE IN THE LETTER TO THE JOINT RESOLUTION APPROVED JUNE 30, 1955, PUBLIC LAW 123, 69 STAT. 238, 240, WHICH PROVIDES IN PART AS FOLLOWS:

(A) (1) SUCH AMOUNTS AS MAY BE NECESSARY (PLUS INCREASED PAY COSTS PURSUANT TO LAW) FOR CONTINUING PROJECTS OR ACTIVITIES WHICH WERE CONDUCTED IN THE FISCAL YEAR 1955, AND FOR WHICH APPROPRIATIONS, FUNDS, OR OTHER AUTHORITY WOULD BE MADE AVAILABLE IN THE FOLLOWING APPROPRIATION ACTS FOR THE FISCAL YEAR 1956: * * * PUBLIC WORKS APPROPRIATION ACT * * *

SEC. 104. NO APPROPRIATION OR FUND MADE AVAILABLE OR AUTHORITY GRANTED PURSUANT TO THIS TITLE SHALL BE USED TO INITIATE OR RESUME ANY PROJECT OR ACTIVITY WHICH WAS NOT BEING CONDUCTED DURING THE FISCAL YEAR 1955. APPROPRIATIONS MADE AND AUTHORITY GRANTED PURSUANT TO THIS TITLE SHALL COVER ALL OBLIGATIONS OR EXPENDITURES INCURRED FOR ANY PROJECT OR ACTIVITY DURING THE PERIOD FOR WHICH FUNDS OR AUTHORITY FOR SUCH PROJECT OR ACTIVITY ARE AVAILABLE UNDER THIS TITLE.

IN SUMMARIZING THE ASSISTANT SECRETARY STATES THAT THE CONTRACTS BETWEEN SPA AND THE FIVE COOPERATIVES, ENTERED INTO DURING THE YEARS 1949 AND 1950, WERE INOPERATIVE DURING THE FISCAL YEARS 1954 AND 1955, AND THE CONGRESS HAS PROVIDED FUNDS FOR THE FISCAL YEAR 1956 WHICH MAY BE USED BY SPA TO FULFILL ITS OBLIGATIONS UNDER THESE CONTRACTS, AND IT IS POINTED OUT THAT ONLY UNDER THE CONTRACT WITH CENTRAL ELECTRIC POWER COOPERATIVE WAS THERE ANY FULFILLMENT OF CONTRACTUAL OBLIGATIONS PRIOR TO JULY 1, 1953.

THE SPECIFIC QUESTIONS, BASED UPON THE FACTS OUTLINED ABOVE, ON WHICH A DECISION IS REQUESTED ARE STATED IN THE LETTER AS FOLLOWS:

(1) ARE FUNDS APPROPRIATED PURSUANT TO TITLE II OF THE PUBLIC WORKS APPROPRIATION ACT, 1956, SUPRA, AVAILABLE FOR OBLIGATION AND EXPENDITURE BY SPA

DURING THE PERIOD FROM JULY 1, 1955, THROUGH JULY 14, 1955, TO FULFILL CONTRACTUAL OBLIGATIONS UNDER CONTRACTS WITH EACH OF THE FIVE COOPERATIVES?

(2) IF QUESTION (1) IS ANSWERED IN THE NEGATIVE, ARE SUCH FUNDS AVAILABLE FOR OBLIGATION AND EXPENDITURE BY SPA DURING THE PERIOD FROM JULY 1, 1955, THROUGH JULY 14, 1955, TO FULFILL CONTRACTUAL OBLIGATIONS UNDER THE AGREEMENT BETWEEN SPA AND CENTRAL ELECTRIC POWER COOPERATIVE?

IT IS CLEAR FROM THE FACTS RELATED IN THE SUBMISSION THAT THE CONTRACTS ENTERED INTO IN 1949 AND 1950 WERE INOPERATIVE DURING THE FISCAL YEARS 1954 AND 1955. IT IS ALSO EQUALLY CLEAR THAT THE CONGRESS DENIED THE USE OF TEMPORARY APPROPRIATIONS DURING THE FIRST FOURTEEN DAYS OF JULY 1955, FOR CARRYING ON ACTIVITIES UNDER THE CONTRACTS SINCE SUCH ACTIVITIES WERE NOT CONDUCTED DURING THE FISCAL YEAR 1955. IT WAS ONLY UPON ENACTMENT OF THE PUBLIC WORKS APPROPRIATION ACT, 1956, THAT FUNDS WERE MADE AVAILABLE UNDER THE HEADING " CONTINUING FUND, SOUTHWESTERN POWER ADMINISTRATION" WHICH WOULD ENABLE ACTIVATION OF THE SUBJECT CONTRACTS. CONCERNING THE DATE UPON WHICH THEY WERE TO BE ACTIVATED, SENATE REPORT 700, 84TH CONGRESS, ST SESSION, REFERRED TO IN THE SUBMISSION, CONTAINS THE FOLLOWING DIRECT STATEMENT ON THAT POINT:

IT IS THE DESIRE OF THE COMMITTEE THAT THE EXISTING CONTRACTS BETWEEN THE SOUTHWESTERN POWER ADMINISTRATION AND THE G. AND T. COOPERATIVE, BECOME OPERATIVE IMMEDIATELY UPON APPROVAL OF THIS ACT.

ALSO, IN HOUSE REPORT NO. 747, 4TH CONGRESS, ST SESSION, THE DEPARTMENT OF THE INTERIOR WAS INSTRUCTED TO NEGOTIATE AS SOON AS POSSIBLE A SETTLEMENT WITH EACH GENERATING AND TRANSMISSION COOPERATIVE EFFECTIVE AS OF THE DATE OF THE PASSAGE OF THE BILL.

SINCE ACTIVATION OF THE CONTRACTS WAS CONTINGENT UPON THE ENACTMENT OF THE PUBLIC WORKS APPROPRIATION ACT, 1956, AND SINCE THERE WERE NO ACTIVITIES UNDER THE CONTRACTS AUTHORIZED FOR THE PERIOD JULY 1 THROUGH JULY 14, 1955, FUNDS APPROPRIATED IN THE ACT ARE NOT AVAILABLE FOR OBLIGATION AND EXPENDITURE UNDER THE CONTRACTS DURING THAT PERIOD. ACCORDINGLY, THE QUESTIONS PRESENTED ARE ANSWERED IN THE NEGATIVE RESPECTING THE 1949 AND 1950 CONTRACTS REFERRED TO IN THE SUBMISSION.